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Baderelle
appointment Headman Ch 2.3

No......

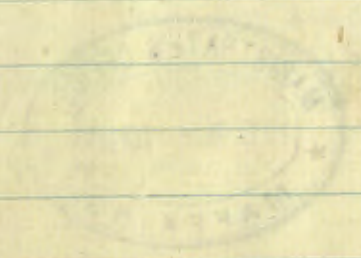
SUBJECT.

Appral

Wasibi vs Wasibi

A P P E A L .
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MASIBI versus MASIBI.



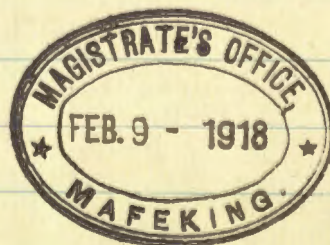
MAKING

MAKING

*Certified a true copy of the
original proceedings filed
of Record in this office.*

Chaumant

CLERK OF THE COURT.



In the CIRCUIT COURT

for the District of MAFEKING.

Mafeking, Wednesday, 20th April, 1910.

In the matter between

JOHN MASIBI - Appellant,

and

PETRUS MASIBI - Respondent.

Before the Honourable Mr. Justice McGregor.

Upon the case being called by the Registrar

IT IS ORDERED

That by consent of parties the matter be removed for hearing in the High Court of Griqualand at a date to be intimated to Counsel by the Registrar.

By order of the Court.

F. Willaim Lange - Circuit Registrar.

Appellant by Mr. Phear.

Respondent by Mr. Kitchin.

In the High Court of Griqualand.

Kimberley, 28th April, 1910.

In the matter of the Appeal between JOHN MASIBI, Appellant,
and PETRUS MASIBI, Respondent.

Before the Honourable Mr. Justice A.J. McGregor.

Upon reading the record of the proceedings in the Court below and hearing Mr. Kitchin of Counsel for the Respondent and Mr. Phear of Counsel for the Appellant upon an objection taken by Mr. Kitchin in limine, to the jurisdiction of this Court to hear the Appeal,

IT IS ORDERED

That the said objection be and the same is hereby upheld with costs of the appeal.

By order of the Court.

Harry Ford.

Registrar.

IN THE SPECIAL COURT OF THE

RESIDENT MAGISTRATE AND NATIVE CHIEF

CONSTITUTED BY SECTION 33 OF PROCLAMATION 2 B.B. of 1885.

J O H N M A S I B I

Appellant.

and

P E T R U S M A S I B I

Respondent.

In the Court holden at Mafeking before Pieter Johannes Hugo and Badirile Montsioa, Paramount Chief of the Barolong, on this the 29th day of March, 1910, at 10 o'clock in the forenoon precisely.

PLAINT.

To show cause why the decision of the Chief Badirile Montsioa regarding the appointment of Petrus Masibi as Headman at Disaneng in place of Methusalah Masibi deposed should not be reversed and why the said John Masibi should not be declared Headman.

Office of the Resident Magistrate

MAFEKING.

14th April, 1910.

I, George Gilbert Daly, Clerk of the Court of the Resident Magistrate for the District of Mafeking, hereby certify and declare that the above are the true proceedings in the case of Petrus Masibi versus John Masibi, and that the said proceedings to the best of my knowledge and belief contain true notes of all evidence received by the said Court, objected to, or offered by either party, and rejected by the said Court, on the hearing of the said case.

Geo. Daly.

Clerk of the Court.

IN THE CIRCUIT COURT

FOR THE DISTRICT OF MAFEKING.

To be held at MAFEKING on Tuesday, the 19th day of April,
1910.

Between

PETRUS MASIBI

Appellant.

and

JOHN MASIBI

Respondent.

Sir,

Please set down the above matter on appeal before this Honourable Court for argument of Tuesday the 19th day of April, 1910, at 10 o'clock in the forenoon or so soon thereafter as Counsel can be heard.

Dated at Mafeking this 14th day of April, 1910.

de Kock & de Kock.

Appellant's Attorneys.

The Registrar (R.M. Clerk)

of the Circuit Court at MAFEKING.

IN THE SPECIAL COURT OF THE RESIDENT MAGISTRATE AND
NATIVE CHIEF CONSTITUTED BY SECTION 33 OF PROCLAMATION
NO. 2 B.B. of 1885.

To PETRUS MASIBI, a Morolong of Disaneng in the District
of Mafeking.

Sir,

Take notice that you are required to appear before a
Special Court composed of the Resident Magistrate of the District
of Mafeking and Badirile Montsioa, Paramount Chief of the Barolong,
at Mafeking on Tuesday the 29th day of March, 1910, at 10 o'clock
in the forenoon with your witnesses, if you have any, to show
cause in an action entered by JOHN MASIBI, by way of appeal,
why the decision of the said Badirile Montsioa as Paramount Chief
of the Barolong in a case decided before him on the 5th March, 1910,
regarding the appointment of PETRUS MASIBI as Headman at Disaneng
in place of Methuselah Masibi deposed, should not be reversed
and why the said JOHN MASIBI should not be declared to be the
Headman of Disaneng during the minority of his nephew JOHN
MASIBI, the son of Methuselah Masibi and the grand-son of Chief
JOHN MASIBI according to Native Law and Custom.

Dated at Mafeking this 7th day of March, 1910.

Geo. Daly.

Clerk of the Court.

Spencer Minchin,

Attorney, Notary, etc.

MAFEKING.

MAFEKING

South Africa.

4th April , 1910.

To the Clerk of the R.M. Court.

MAFEKING.

Sir,

re John Masibi versus Petrus Masibi.

Please take notice that it is the intention of our client Petrus Masibi, respondent in the above suit, to appeal from the decision, as regards costs, given by the Special Court of the Assistant Resident Magistrate and Native Chief constituted in terms of Section 33 Proc. 2 of 1885(B.B.) on Tuesday last the 29th ult. at Mafeking to the ^{first} ~~last~~ ensuing Circuit Court Mafeking on or about the 19th instant.

We presume your functions as Clerk extend to proceedings relating to such Special Court.

We are

Sir,

Yours obediently,

de Kock & de Kock.

Appellant's Attorneys.

REASONS FOR JUDGMENT.

Respondent through his attorney has noted an appeal as regards costs.

According to Proclamation No. 2 B.B. of 1885, the Schedule thereto makes provision for all costs, but, if reference be made to the Schedule to Act 38 of 1899 it will be found that the whole of the Proclamation No. 2 B.B. of 1885 with the exception of sections 8,9,10,11,20, (from the word "except" to the word "defendant") 31,32, 33,41,42,44,48, and 50 of Schedule has been repealed, consequently the Court was of opinion that, no legal authority existed to award costs.

P.J. Hugo.

Assistant Resident Magistrate.

Mafeking,

12th April, 1910.

IN THE SPECIAL COURT OF THE RESIDENT MAGISTRATE AND
NATIVE CHIEF constituted by Section 33 of Proc. 2 B.B. of 1885.

In re

JOHN MASIBI vs. PETRUS MASIBI

EXCEPTION.

Respondent by his Attorney excepts to the notice served upon him to appear before this Special Court and objects to this Court determining this suit in as much as the matter under consideration was not and did not constitute a legal case, suit or proceeding in the Lower Court; the proceedings before the Chief on the 5th March, 1910, were merely an enquiry or meeting, the result of an administrative appointment, designed to convey to the people according to native law and custom, the decision arrived at by the Government in regard to the appointment of a Headman at Disaneng.

Respondent accordingly asks for the case to be dismissed with costs of suit on Higher Court scale as in ordinary appeals.

Dated at Mafeking this 29th March, 1910.

N.O. de Kock.

Respondent Attorneys.

IN THE SPECIAL COURT OF THE RESIDENT MAGISTRATE AND NATIVE
CHIEF constituted by Sect. 33 of Proc. 2 (B.B.) of 1885.

In re

JOHN MASIBI vs. PETRUS MASIBI.

EXCEPTION.

In the event of the Court holding that there was a decision by the Chief on the 5th of March, 1910, as contemplated or referred to in Section 33, Respondent through his Attorney, excepts to Appellant at this stage raising the point or ground of appeal namely that the Chief in the lower Court has no jurisdiction over the Motlhoaros; Appellant did not except to the Chief's jurisdiction in the lower Court and cannot do so here.

Respondent accordingly asks that the case be dismissed with costs of suit on the Higher Court scale as in ordinary appeals.

Dated at Mafeking this 29th March, 1910.

N.C. de Kock.

Respondent's Attorneys.

The

Paramoutn Chief Badirile Montsisa.

Mafeking.

Appointment of Peter Masibi as Headman at Disaneng.

I am directed by the Civil Commissioner, Mafeking, to inform you that he has recommended the appointment of Peter Masibi as Headman at Disaneng vice Methuselah Masibi dismissed.

Kindly arrange a meeting for me at Disaneng on Tuesday the 1st proximo in order that these changes may be made known to the people.- John Masibi who has been acting Headman for some time past should also be instructed to be present at the meeting.

E. Stubbs.

Inspector Native Reserves.

Office of the Inspector of Native Reserves.

Setlagoli, - Mafeking.

22nd January , 1910.

Disaneng.

Mafeking.

15 - 2 - 09

Honourable Magistrate,

Will you kindly allow me to say my grievances about what I have heard from the Government. I have heard that the Government has put Methuselah out of his position on account of that he breaks the Governments rules. What grieve us is that Barolong on hearing this say that they will be our chiefs because ours is taken out of his position and we the people of Motlhoare are refusing to what the Barolong say. We do not understand each other with the Barolong. They annoy us. They say that this place does not belong to us, it belongs to them. They say this as if we were not fighting when they fought for it and yet we did fight. What we say is that we have right in this place just as they have. These are our grievances we wanted to say.

I am Sir,

Your obedient servant,

John Masibi.

IN THE SPECIAL COURT OF THE RESIDENT MAGISTRATE AND NATIVE
CHIEF constituted by Section 33 of Proclamation No. 2 B.B. of
1885.

In the matter between

JOHN MASIBI and PETRUS MASIBI.

To the Respondent Petrus Masibi of Disaneng.

Sir,

Take notice that application will be made on the 29th
instant at the hearing of the above appeal for the amendment of
the summons by striking out the words "a Morolong" as a description
of yourself and the insertion of the words "a Motlhoaro" also that
one of the grounds of Appeal will be that the Paramount Chief of
the Barolong has no jurisdiction by law or custom over the
Motlhoaros.

Mafeking,

26/3/10.

S. Minchin.

Attorney for John Masibi.

IN THE SPECIAL COURT OF THE RESIDENT MAGISTRATE AND NATIVE
CHIEF constituted by Section 33 of Proclamation No. 2 B.B of 1885.
at MAFEKING.

To the Messenger of the Court.

SUMMON

Edward Charles Albert Welsh, Resident Magistrate and
Civil Commissioner for the district of Mafeking at Mafeking that
laying aside all and singular business and excuses, he appear in
person before this Court at Mafeking on Tuesday the 29th day of
March, 1910, at 10 o'clock in the forenoon, and also that he
produce at the time and place aforesaid all deeds, documents and
writings in his possession bearing on the case and then and there
to testify and declare all and singular those things which he
knows in a certain case now depending in the said Court between

John Masibi.....Appellant.

and Petrus Masibi.....Respondent

and that he by no means omit to do so at his peril.

Serve on him the said Edward Charles Albert Welsh a copy of
this summons and return to the said Court what you have done thereon.

Dated at Mafeking on this the 26th day of March, 1910.

Geo. Daly.

Clerk of the Court.

de Kock & de Kock.

Respondent's Attorneys.

Mafeking.

RETURN.

On this the 26th day of March, 1910, I have duly served a
copy of the within summons upon the within mentioned Edward
Charles Albert Welsh personally at Mafeking at the same time
exhibiting the original and explaining the nature and exigency
thereof.

T. Aldred.

Messenger R.M. Court.

SPECIAL POWER OF ATTORNEY.

I, the undersigned, John Masibi
do hereby nominate, constitute and appoint

Spencer Minchin

with power of substitution, to be my true and lawful Attorney and Agent, in my name, place, and stead, to appear before a Special Court composed of the Resident Magistrate of the District of Mafeking and Badirile Montsioa, Paramount Chief of the Barolong and then and there as my act and deed, to proceed in an action entered by me by way of appeal from the decision of the said Badirile as Paramount Chief of the Barolong regarding the appointment of one Petrus Masibi as Headman of Disaneng instead of me,

and generally for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite as fully and effectually for all intents and purposes, as I might or could do if personally present and acting herein - hereby ratifying, allowing, and confirming, and promising and agreeing to ratify, allow, and confirm all and whatsoever my said Attorney and Agent shall lawfully do or cause to be done in the premises by virtue of these Presents.

Given under my hand at Mafeking this 23rd day of March,
1910, in the presence of the under-signed witnesses:-

As witnesses:-

R.H. Murray.

T. Maseng.

John Masibi.

POWER OF ATTORNEY.

I, the undersigned Petrus Masibi of Disaneng do hereby nominate, constitute and appoint Nicholas Collen de Kock of Mafeking, with power of substitution to be my lawful Attorney and Agent for me and in my name to defend proceedings of what nature and kind which may be instituted against me in any Court in this Colony, and generally for effecting the purposes aforesaid, to do or cause to be done, whatsoever shall be requisite, as fully and effectually, to all intents and purposes, as I might or could do, if personally present and acting herein;- hereby ratifying, allowing and confirming and promising ^{and} ~~to~~ agreeing to ratify, allow and confirm, all and whatsoever my said attorney shall lawfully do, or cause to be done, by virtue of these presents.

Given under my hand at Mafeking this 29th day of March,

1910, in the presence of the undersigned witnesses:-

A s witnesses:-

Silas Molema.

Joseph Taoana.

Petrus Masibi

his 0 mark.

1/- Stamp.

I, Aaron Mothata make oath and say that on the 8th day of March, 1910, I duly served the within summons upon the within named Petrus Masibi by leaving for him with his wife at his home at Disaneng a copy and informing her of the contents and I further informed the said Petrus Masibi personally at Mafeking Stad on the 9th day of March, 1910, that I had served the within summons upon his wife and informed him of the contents.

Aaron Mothata.

Sworn before me at Mafeking on the 11th day of March, 1910.

E.O. Welsh.

J.P.

Mr. Minchin appears on behalf of Appellant JAN MASIBI.

Mr. de Kock appears on behalf of PETRUS MASIBI.

Mr. de Kock takes an exception to the case; - Exceptions "A" & "B" put in.

PETRUS MASIBI sworn states :-

I am respondent in this case at reside at Disaneng.- I am Headman, my appointment was made by the Chief and the Government.- I was informed by the Inspector of Native Reserves that I was appointed Headman.- My Chief Badirile was present.- After the meeting Badirile called me and informed me of the appointment made.- Nothing further was done.- The Chief held a meeting during the early part of the month at Mafeking, which meeting is referred to by Mr. Minchin.- The meeting had nothing to do with any legal suit or action.- This meeting was merely called to inform the people I belong to the Bachlara tribe and require Badirile as my Chief.- The appellant raised no exception to the Chief's jurisdiction when the appointment was made nor did appellant at any time raise the point of the Chief's jurisdiction until the meeting at Mafeking.-

By Mr. Minchin :- I am a son of the late Chief Masibi.- Jan Masibi is a son of my elder brother.- The Motlhoaros came to Disaneng in 1865 - this was beofre Montsioa came to Mafeking.- After the Warren Expedition we remained on the Reserve.- The Motlhoaros were then under the jurisdiction of the Chief Barolong Chief at Mafeking.- The Barolong Chief has often tried our cases since we came into the country.- The Chief once tried a case where we had a church dispute - the Chief did not sit as arbitrator but as Chief.- He tried another case where we had a dispute about cattle.- I cannot say whether our Motlhoaros recognise Badirile as Chief.- I remember Mr. Dovey coming to us last year and asked me who was the proper headman.- I did not tell the Inspector that John was the proper Chief.- John acted as Chief at his stadt and collected Hut Tax.- I came to Mafeking to object to the appointment of Mafeking.- During the early part of the month Badirile informed the

the people about the appointment.- I am older than John but belong to a younger line.- I was appointed Headman because I was born first.- If Methuselah was dead then I have the preference to be appointed Headman.- My appointment was made by Badirile.- If the Government do not sanction the appointment then I am not legally ~~appointed.~~ ^{appointed.}- I am sure that my appointment has been confirmed by the Government.-

CECIL CAMPBELL STUBBS sworn states:-

I am Inspector of Native Reserves and know the parties in this action.- Petrus Masibi is Headman at Disaneng.- I receive my instructions from the Resident Magistrate.- As regards the present case I went out to inform the people that Petrus Masibi had been appointed Headman.- The Chief Badirile nominated Petrus as Headman which was then forwarded to the Government for approval.- The appointment is only complete upon confirmation by Government.- The Resident Magistrate instructed me to proceed to Disaneng.- The Government need not confirm any appointment.- The matter of appointment rests with the Government.- All correspondence D. upon this subject passed through the Resident Magistrate's Office.- Letter "C" read and put in.-

By Mr. Minchin:- I have been connected with the Barolong tribe since September last.- I know the Motlhoaros is a separate tribe from the Barolong.- Their laws and customs are similar to those of the Barolongs.- Jan Masibi was a recognised Headman when I took over.- From what I could gather at the time Jan Masibi was deposed because he was not considered the proper man.- The mere fact of Natives residing upon the Reserve will not give Badirile jurisdiction.- If a Chief or Headman dies then the nomination is made by the people.- If the nomination is irregular the appointment will be valid as long as the Government approves thereof.- Apart from the present case I do not know of another instance where the Barolong Chief has jurisdiction over the Motlhoaros.-

Re-exd. :- I am unable to quote an instance where the Motlhoaros refused to obey Badirile.-

EDWARD CHARLES ALBERT WELSH sworn states:-

I am Resident Magistrate for the District

and

and as such represent the Government.- I have frequently spoken to the parties in this suit.- Appointments of Headmen are made by the Government and Headmen do not succeed to the office - it not being hereditary.- Petrus Masibi is the Headman at Disaneng whose appointment was made by Government.- The Chief is consulted in the appointment of Headmen.- In this particular case the nomination was made by me after consultation with the Chief and Counsellors.- There is an old Proclamation for following this procedure.- I have only had one appointment since my assumption of duty here,- I am under the impression it is recognised by the Government that Badirile has jurisdiction over the people under Masibi.- There has been some correspondence regarding this appointment.-

D. I produce letter from Native Affairs Department dated 24th January last appointing Petrus Masibi Headman -(put in).-I do not know of any law regarding the appointment of Headmen.- The whole function is performed by Government.- Jan Masibi's appointment was entirely provisional and not reported.- Officially there has been no Headman since the deportation of Methuselah until the appointment of Petrus Masibi.-

By Mr. Minchin:- I am not prepared to say that the Barolong and the Motlhoaros are the same.- Mere residence on Native Reserve does not constitute tribal jurisdiction.- All the people do not admit Badirile's jurisdiction.- I received a letter in similar

E. terms as the one now put in.- There is no law in force which rules the appointment of Chiefs or Headmen.- It is governed more by custom.- I am not prepared to say that Government must necessarily confirm every recommendation.-

Re - exd:- I have never had any reason to doubt Badirille's jurisdiction over the Motlhoaros at Disaneng.-

Appellants.

JOHN MASIBI sworn states:-

I am the nephew of Motlhoaros and grand-son of Masibi and son of Petrus, father younger brother.- We originally

came

came from Griqualand West and we were living at Disaneng before Bechuanaland was declared a Crown Colony.- Our people have never been subject to the Barolong jurisdiction.- The Barolongs never come to our Kothla but we go to theirs.- I have heard the evidence of Petrus and do not agree with him.- Montsioa tried one case where we had a church dispute, but he did so as arbitrator.- This is the only case I know of.- During last year Methuselah was deposed and I was nominated.- I was recognised by the Government Inspector and I acted as Headman for some time.- I was appointed Headman by the people according to native custom.- We were not consulted in this appointment.- I am the hereditary Headman at Disaneng.- Methuselah's son is about 8 years.- He cannot be Headman until he is circumcised which generally takes place at the age of twenty.- We go by different branches and not by age.- The appointment of Petrus was made by Badirile.-

By Mr. de Kock:- I was surprised when the Magistrate nominated Petrus.- A good many people at Disaneng do not agree with my views.- I am aware that when we have disputes Government settles it.- I am aware that Methuselah recognised Badirile as Chief and I am also aware that I am bound by my predecessor's acts.-

NQAANAENG sworn states:-

I am a Maclara and am an old man.- I remember coming here with my people in 1865 and have ever since lived at Disaneng.- Montsioa has never tried our cases.- We tried our own cases.- I do remember on one occasion where Montsioa tried a case - a Church dispute.- This case came before him as arbitrator.- Our people appoint Headmen.- When Methuselah was deposed John should have been appointed Headman.- We have not been consulted in this appointment.- Mr. Dovey asked us to nominate John and we nominated John.- I do not recognise Petrus' appointment because he was not nominated by the people.- John should have acted as Headman during the minority of Methuselah's son.-

By Mr. de Kock:- When Methuselah was Headman he recognised Badirile as Chief.- There may have been cases which Badirile decided but I cannot remember.- When Mr. Dovey suggested we should

should nominate I thought he was acting upon instructions from the Resident Magistrate.- I object to Petrus' appointment because he is not the next.- The Barolongs gave us protection when first we came here.-

Judgment:-

Exception "A" upheld and case dismissed with which the other member of this Court, "Chief Badirile", concurred.

P.J. Hugo.

Assistant R.M.

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Collection Number: A979

Silas T MOLEMA and Solomon T PLAATJE Papers

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